S.B. Civil Misc. Appeal No.1118/2004

Shanta K. Panikar vs. Raj. Vitta Nigam & Ors.

Date : 3.8.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. RR Nagori, for the appellants.

Mr. Anil Bhandari, for the respondent.

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Heard learned counsel for the parties.

The appellant is aggrieved against the order dated 8.10.2003 by which the trial court on an application for attachment before judgment filed under Order 38 Rule 5 CPC passed an order to attach all pensionary benefits of the appellant on the ground that the appellant herself gave her consent for such attachment.

According to learned counsel for the appellant, the appellant did not gave any free consent and the trial court, contrary to the statutory provision of law, passed the blanket order attaching the entire pensionary benefits of the appellant. According to learned counsel for the appellant, even with consent, certain pensionary benefits cannot be attached. Learned counsel for the appellant relies on the judgment of the Hon'ble Supreme Court delivered in the case of Union of India vs. Jyoti Chit Fund & Finance and others reported in A.I.R. 1976 SC 1163.

It appears from the impugned order that the trial court

has not looked into the relevant provisions of law and passed the order to attach all the pensionary benefits of the appellant, without even assessing what is the amount due and what amount can be attached by the order of the Court.

In view of the above, this appeal is allowed, the impugned order dated 8.10.2003 is set aside and the trial court is directed to decide the application under Order 38 Rule 5 CPC in accordance with law afresh.

(PRAKASH TATIA), J.

S.Phophaliya